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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 437

OCEAN DRILLING & EXPLORATION COMPANY,
Petitioner,

versus

BERRY BROTHERS OIL FIELD SERVICE, INC.
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATE COURT OF APPEALS FOR THE FIFTH CIRCUIT

Respondent, Berry Brothers Oil Field Service, Inc., submits that the petition of Ocean Drilling & Exploration Company for a writ of certiorari to review the judgments of the United States Court of Appeals for the Fifth Circuit, should be denied.

QUESTIONS PRESENTED

In its petition, petitioner requests that the Court grant a writ in order to review two questions, whether the doctrine of *Ryan Stevedoring Company v. Pan Atlantic Steamship Corporation*, 350 U.S. 124, 76 S.Ct. 232, 100 L.Ed. 133 (1956), applies in the offshore oil

industry, and whether petitioner should be afforded the opportunity to demonstrate that the *Ryan* doctrine is applicable in the offshore oil industry. Those are not the questions presented in this case and decided by the Court of Appeals. This case did not involve a vessel, it related to a permanent, fixed platform. The question presented in the case and decided by the Court of Appeals was whether the *Ryan* rule, as extended and elaborated upon in such subsequent shipowner — stevedore cases as *Weyerhaeuser*[1] and *Italia*,[2] should be applied to a case not involving the rather special rules governing the obligations and liability of shipowners, to a case in no way involving a vessel or services to or on a vessel, to an accident resulting in injuries to persons who were not seamen, so as to obligate an alleged contractor to indemnify petitioner for claims asserted entirely on the basis of petitioner's own negligence.

STATEMENT OF THE CASE

Petitioner filed third party complaints against respondent seeking to recover indemnity under the *Ryan* doctrine, in the event of petitioner's liability to plaintiffs, Fagan and Butler, in damage suits filed by plaintiffs against petitioner. In their suit against petitioner, plaintiffs claimed to have been injured as a result of an accident that occurred on a stationary oil and gas production platform, on which plaintiffs were working, when a tank on the platform allegedly exploded, and plaintiffs claimed that the accident was caused by pe-

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[1] *Weyerhaeuser Steamship Co. v. Nacerima Operating Co.*, 355 U.S. 563, 78 S.Ct. 483 (1958).

[2] *Italia Societa Per Azioni di Navigazione v. Oregon Stevedoring Company*, 376 U.S. 315, 84 S.Ct. 748 (1964).

titioner's negligence. While one of the complaints, Butler's, also alleged that the platform was a vessel and urged unseaworthiness as a basis for recovery from petitioner, petitioner alleged in its third party complaint that the platform was a fixed structure. It is not disputed that the platform was a fixed, permanent platform, not a vessel. Petitioner, accordingly, could not be liable to plaintiffs unless it was guilty of independent negligence on its own part proximately causing the accident. *Pure Oil Company v. Snipes*, 293 F.2d 60 (5th Cir. 1961). The complaints alleged independent negligence on petitioner's own part such as specifically representing and assuring that the tank had been degassed and was free of explosive substances, whereas it was not, and in, at the time involved, running gas into the tank through open valves and causing gas or other explosive substances to enter the tank directly resulting in the explosion.

Respondent moved to dismiss petitioner's third party complaints for failure to state claims on which relief could be granted. The motions were maintained by the district court and the third party complaints were dismissed. Petitioner subsequently settled plaintiffs' suits and then appealed the dismissals of the third party complaints to the United States Court of Appeals for the Fifth Circuit. The dismissals were affirmed by the Court of Appeals. Petitioner is in error in representing that the decision of the Court of Appeals was grounded on a holding that the *Ryan* doctrine was inapplicable to the offshore oil industry. The Court's decision was simply based on a finding that the *Ryan*, *Weyerhaeuser* and *Italia* rules were inapplicable under the particular circumstances of the case involved, since

the case did not involve a vessel, plaintiffs were not seamen, and the special rules governing the rights and obligations of shipowners, seamen and contractors servicing vessels were not involved.

SUMMARY OF ARGUMENT

The petition for writ of certiorari should be denied. This case does not involve a vessel, nor a vessel owner, nor a seaman, nor a contractor performing services for a vessel, and it does not involve a vessel owner who could be liable to employees of a contractor regardless of negligence. The special circumstances and considerations which give rise to and justify the rules of the *Ryan*, *Italia* and *Weyerhaeuser* cases are not present in this case. The decision of the Court of Appeals holding that the *Ryan* doctrine was not applicable to the particular circumstances involved in this case is clearly correct.

The question presented for review by the petition, which relate to application of the *Ryan* doctrine "in the offshore oil industry", are not the questions which were presented in this case and decided by the Court of Appeals. The Court of Appeals did not hold that the *Ryan* doctrine is inapplicable in the offshore oil industry. The petition does not request that this Court review the questions involved in this case and decided by the Court of Appeals.

None of the considerations referred to in Rule 19 of the Rules of this Court, governing the granting of review on writ of certiorari, are present in this case. The decision of the Court of Appeals is not in conflict

with any previous decision of this Court nor with any decision of another Court of Appeals. The case does not present an important question of federal law which has not been, but should be, settled by this Court, and there are no special and important reasons for this Court to review the decision of the Court of Appeals. The case does not involve the special circumstances and considerations which have drawn and merited the Court's attention to cases such as *Ryan*, *Weyerhaeuser* and *Italia*.

ARGUMENT

In *Italia Societa Per Azioni di Navigazione v. Oregon Stevedoring Company, Inc.*, 376 U.S. 315, 84 S.Ct. 748 (1964), this Honorable Court pointed up the special circumstances and considerations which justify the rules applied in the *Ryan* case and subsequent shipowner-stevedore cases such as *Weyerhaeuser* and *Italia*. The Court stated, at 376 U.S. 324, 84 S.Ct. 754:

> "Where the shipowner is liable to the employees of the stevedore company as well as its employees for failing to supply a vessel and equipment free of defects, *regardless of negligence*, we do not think it unfair or unwise to require the stevedore to indemnify the shipowner for damages sustained as a result of injury-producing defective equipment supplied by a stevedore in furtherance of its contractual obligations. (Emphasis Supplied)
>
> "Both sides press upon us their interpretation of the law in regard to the scope of warranties in nonsales contracts, such as contracts of bailment and service agreements. But we deal here

> with a suit for indemnification based upon a maritime contract, governed by federal law, American Stevedores, Inc. v. Porello, supra, *in an area where rather special rules governing the obligations and liability of shipowners prevail, rules that are designed to minimize the hazards encountered by seamen, to compensate seamen for the accidents that inevitably occur,* and to minimize the likelihood of such accidents. By placing the burden ultimately on the company whose default caused the injury, *Reed v. The Yaka,* 373 U.S. 410, 414, 83 S.Ct. 1349, 1352-1353, 10 L.Ed. 2d 448, we think our decision today is in furtherance of these objectives." (Emphasis Supplied)

The case at bar does not involve those special circumstances and considerations referred to in *Italia,* which justify the rules of the *Ryan, Italia* and *Weyerhaeuser* cases. This case does not involve a suit for indemnification based upon a maritime contract "in an area where rather special rules governing the obligations and liability of shipowners prevail, rules that are designed to minimize the hazards encountered by seamen . . .". This case does not involve a shipowner who could be liable to employees of a stevedore or other contractor for failing to supply a vessel and equipment free from defect, regardless of negligence. In this case there is no ship, there is no shipowner, there is no seaman, and petitioner could be liable to plaintiffs only if it was guilty of independent negligence of its own. *Pure Oil Co. v. Snipes,* 293 F.2d 60 (5th Cir. 1961). The case which was presented to the Court of Appeals and which it decided was a case involving a permanent, fixed platform. Such a platform is not a vessel, workmen thereon are not seamen and they are not entitled to

the warranty of seaworthiness. *Dronet v. Reading & Bates Offshore Company*, 367 F.2d 150 (5th Cir. 1966); *Texas Company v. Savoie*, 240 F.2d 674 (5th Cir. 1957), cert. denied, 355 U.S. 840, 78 S.Ct. 49, 2 L.Ed.2d 51. The Court of Appeals simply held that the *Ryan*, *Weyerhaeuser* and *Italia* rules were not applicable to the particular circumstances of this case. In its opinion, which is now reported as *Ocean Drilling & Exploration Company v. Berry Brothers Oilfield Service*, 377 F.2d 511 (5th Cir. 1967), the Court stated, at 377 F.2d 513:

> 'While freely implementing this contractual obligation of the stevedore to indemnify the shipowner in accordance with the liberal spirit of *Ryan*, we have hesitated, however, to extend it beyond those controversies involving the 'special rules governing the obligations and liability of shipowners' which necessitated its formulation and justify its application. Without attempting to define all of the possible limitations that might properly be placed upon its scope, it is sufficient to state that we are likewise unable to discover any compelling reason to justify the extension of that shipowner-stevedore originated rule to the facts of this controversy."

The decision of the Court of Appeals is clearly correct.

Petitioner attempts to phrase the case in terms of application of the *Ryan* doctrine to the offshore oil industry. The petition and its appendices refer to drilling barges, crew boats, tenders, and other vessels, special purpose or otherwise, used in the offshore oil industry. References are made to contractors performing services on such vessels, to workers thereon, and to

cases holding that workers on such special purpose vessels are susceptible to classification as seamen. None of those references are in any way relevant or pertinent to the case decided by the Court of Appeals. The Court of Appeals was not called upon to decide and did not decide that the *Ryan* doctrine should not apply to cases involving services to or on drilling barges, crew boats, or other types of vessels, special purpose or otherwise, used in the offshore oil industry. The Court of Appeals did not hold that the *Ryan* doctrine has no application in cases involving injuries to workmen engaged in loading or unloading supplies and equipment from such vessels or engaged in performing repairs or other services on such vessels. The Court of Appeals did not hold, as represented by petitioner, that the *Ryan* doctrine is not applicable in the offshore oil industry. In fact, in a case decided only the day before the decision in the case at bar, the Court of Appeals applied the *Ryan* doctrine in an offshore oil industry situation, in a case involving a claim for indemnity by the owner of a vessel engaged in the offshore oil industry against a contractor performing services for the vessel, where the contractor's employee, found to be a seaman, was injured. See *Underwater Services, Inc. v. Brown & Root Marine Operators, Inc.*, 376 F.2d 852 (5th Cir. 1967), a *per curiam* decision affirming and adopting the opinion of the district court in *Smith v. Brown & Root Marine Operators, Inc.*, 243 F.Supp. 130 (W.D.La. 1965). The petition, accordingly, does not even request that this Court review the quetsions involved in this case and decided by the Court of Appeals.

The decision in this case is correct and does not conflict with any decision of this Court nor with any

decision of another Court of Appeals. The cases cited at Page 9 of the petition, which petitioner intimates are in conflict with the decision in the case at bar, are all completely distinguishable. All of the cited cases involved claims by vessel owners against persons who contracted to render services for the vessel, and those involving personal injuries involved injuries to persons who were seamen and to whom the special obligations and duties inherent in the relationship between vessel owner and seaman were applicable. See *Smith v. Brown & Root Marine Operators, Inc.*, 243 F.Supp. 130 (W.D. La. 1965) (which, as noted above, was affirmed by the Fifth Circuit Court of Appeals in a decision rendered the day before that in the case at bar); *Union Barge Line Corporation v. Allen*, 361 F.2d 217 (5th Cir. 1966); *Ammesmaki v. Interlake Steamship Company*, 342 F.2d 627 (7th Cir. 1965); *United States v. Tug Manzanillo*, 310 F.2d 220 (9th Cir. 1962); *Crystal v. Cunard Steamship Company*, 339 F.2d 295 (2nd Cir. 1964). Petitioner also cites *Weyerhaeuser Steamship Company v. Nacerima Operating Company*, 355 U.S. 553, 78 S.Ct. 438 (1958) to the effect that a shipowner may possibly obtain indemnity from the stevedore, even though guilty of negligence. But *Weyerhaeuser* involved the shipowner-seaman situation, in fact the classical shipowner-stevedore situation, and it involved the rather special rules governing the obligations and liabilities, duties and rights of shipowners, vessels and seamen. It is not pertinent to the case at bar, which does involve those special circumstances and considerations. And the fact that the rules of the *Ryan*, *Weyerhaeuser* and *Italia* cases are urged to create an obligation to indemnify one from liability resulting from his own negligence,

is good and valid reason to limit application of the rules to those situations that do present the special considerations and circumstances giving rise to the rules and justifying their application. None of the cases cited by the petitioner in its petition for writs is in conflict with the decision of the Court of Appeals in the case at bar.

Petitioner complains that the claim for indemnity should not have been dismissed without petitioner being afforded the right to demonstrate the necessity of extending the *Ryan* doctrine to the offshore oil industry, on the basis of "business and economic considerations, safety of performance, etc." But, as demonstrated hereinabove, the issue preesnted in this case was not whether the *Ryan* doctrine should or should not be applied to the offshore oil industry, and the "business and economic considerations, safety of performance, etc." referred to, which are apparently those set forth in Appendices D and E of the petition, are irrelevant to the case at bar. Further, there can be no doubt that the Court of Appeals for the Fifth Circuit is and was, when it decided this case, already completely familiar with the offshore oil industry situation and its circumstances. Specialty contractors may be used in the offshore oil industry and hazards may exist in connection with exploration and production work in that industry. But similar specialty contractors are used and simliar hazards are encountered in the inland oil industry and, in fact, in many other types of industrial occupations. Those factors would not transform this case into one involving vessels, seamen, and the special rules governing the obligations, liabilities and rights of shipowners and seamen. They would not convert the situa-

tion in this case into the *Ryan, Weyerhaeuser* or *Italia* situation. Additionally, in the offshore platform situation, which is the situation presented here, the owner of the well and the platform is generally a major company or a group of such companies. Profits accruing to the well owner from producing wells are tremendous. The well owners are much better situated financially than the various service companies, most of whom are quite small and marginal. The well owner is much better able to bear any losses that may occur. Yet, in essence, petitioner's position is that the well owner should be able to shift the entire burden of its own liability *resulting from its own negligence* to the small service company, the party at the bottom of the ladder and the party least financially capable of bearing the losses. Contracts with major companies for work on offshore platforms sometime contain express hold harmless agreements in favor of the major company, under which the service company expressly agrees to indemnify the major company from its liability resulting from its own negligence. Quite often the small contractor consents to such one-sided agreements because of economic pressure resulting from the contractor's poor bargaining position when dealing with offshore well owners. The result is unjust and inequitable. The injustice would certainly be greater if the same obligation is imposed where there is no such agreement.

The petition for a writ of certiorari should be denied. The decision of the Court of Appeals is correct. The questions that petitioner requests the Court to review are not the questions involved in this case an decided by the Court of Appeals. None of the considerations referred to in Rule 19 of the Rules of this Court, gov-

erning the granting of review on writ of certiorari, are present in this case. The decision of the Court of Appeals is not in conflict with any previous decision of this Court nor with any decision of another Court of Appeals. This case does not present an important question of federal law which has not been, but should be, settled by this Court, and there are no special and important reasons, such as contemplated by Rule 19, for this Honorable Court to review the decision of the Court of Appeals, as is demonstrated by the fact that this Court has previously refused to review decisions of the Court of Appeals involving the question of application of the *Ryan* rule to cases not involving the special circumstances giving rise to the *Ryan* rule and justifying its application, and decisions dealing with the rights and obligations applicable in cases involving injuries to workmen on permanent offshore platforms. See *Halliburton Company v. Norton Drilling Company*, 302 F.2d 431 (5th Cir. 1962) cert. den., 374 U.S. 824, 83 S.Ct. 1870 (1963); *Texas Company v. Savoie*, 240 F.2d 674 (5th Cir. 1957), cert. den., 355 U.S. 840, 78 S.Ct. 49. The case at bar does not involve the circumstances and considerations peculiar to vessels, vessel owners, seamen, contractors rendering services to or on vessels and the special rules governing their rights and obligations, which have drawn and merited the Court's attention to cases such as *Ryan*, *Weyerhaeuser* and *Italia*. Respondent submits that it is because petitioner recognizes that the decision of the Court of Appeals on the issue involved in this case is correct and is not properly one for review by this Court on writ of certiorari that petitioner has attempted to phrase the case in terms of applicability of the *Ryan* doctrine to "the offshore oil

industry", and talks of drilling barges, crew boats, tenders, and other types of vessels and workers theron, none of which are involved in or pertinent to this case.

CONCLUSION

It is respectfully submitted that the petition for writ of certiorari should be denied.

Respectfully submitted,

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CERTIFICATION OF SERVICE

I hereby certify that a copy of the above and foregoing brief in opposition to petition for writ of certiorari has been duly served on George B. Matthews, Esq., attorney for petitioner, by depositing same in the United States mail, postage prepaid, properly addressed to him at 1836 National Bank of Commerce Building, New Orleans, Louisiana, and upon Daniel Huttenbrauck, Esq., attorney for petitioner, by depositing same in the United States mail, airmail, postage prepaid, properly addressed to him at 27 William Street, New York, New York.

Lafayette, Louisiana, this _____ day of _____, 1967.